

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOEL B. MONTGOMERY, et al.,

Plaintiffs,

:

Case No. 3:07-cv-470

-vs-

Magistrate Judge Michael R. Merz

:

MARY L. SANDERS, et al.,

Defendants.

DECISION AND ORDER

This case is before the Court on Plaintiffs' Second Motion to Compel (Doc. No. 70). In its Response in Opposition (Doc. No. 71), the Government details the additional discovery responses it has recently made to Plaintiff's discovery requests. It does not contest the fact that the responses were made much later than required by the Federal Rules of Civil Procedure, arguing the delay was caused by the deployment to Iraq of the military officer responsible for responding.

In his Reply (Doc. No. 72), Plaintiff does not suggest any ways in which the produced discovery is inadequate other than its tardiness. Thus to the extent it sought discovery which had not been produced at the time it was filed (July 6, 2010) but has now been produced, the Motion to Compel is moot.

However, as Plaintiff correctly points out, late production of discovery does not shield a producing party from sanctions for the late production; to that extent the Motion is not moot. Plaintiff may submit an application for an award of expenses and attorney fees for filing the Second Motion to Compel.

July 30, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge